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Kathy Manke Avago Technologies Limited 4380 Ziegler Road Fort Collins, CO 80525			EXAMINER YAM, STEPHEN K	
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Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES ALBERT MATTHEWS

Appeal 2009-2056
Application 10/632,167
Technology Center 2800

Decided:¹ May 20, 2009

Before EDWARD C. KIMLIN, CHARLES F. WARREN, and
MICHAEL P. COLAIANNI, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 5, 6, 10, 11, and 19-23. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6. Claim 1 is illustrative:

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the Decided Date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

1. An integrated optical apparatus configured to detect and diffract light transmitted from a light source external to the integrated optical apparatus, the integrated optical apparatus comprising:

a substrate; and

a diffractive optical element including:

a plurality of stacked layers of optically transmissive material formed on the substrate, wherein at least one of the layers of optically transmissive material is a sensing element having a resistance responsive to incident light.

The Examiner relies upon the following references as evidence of obviousness:

Morris, Jr. (Morris)	US 6,452,669 B1	Sep. 17, 2002
Wagner	US 6,879,014 B2	Apr. 12, 2005

Appellant's claimed invention is directed to an integrated optical apparatus for detecting and diffracting light emitted from a source. The apparatus comprises a diffractive optical element including a plurality of stacked layers of optically transmissive material. One of the optically transmissive materials is a sensing element.

All the appealed claims stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wagner in view of Morris.

Appellant does not set forth separate, substantive arguments for the dependent claims on appeal. Accordingly, all the appealed claims stand or fall together with claim 1.

We have thoroughly reviewed each of Appellant's arguments for patentability. However, we are in complete agreement with the Examiner

that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the Examiner's rejection for essentially those reasons expressed in the Answer, and we add the following primarily for emphasis.

Appellant does not dispute the Examiner's factual determination that Wagner, like Appellant, discloses an integrated optical apparatus configured to detect light transmitted from a source external to the apparatus, wherein the apparatus comprises a substrate and an optical element including a plurality of stacked layers of optically transmissive materials formed on the substrate, with one of the layers of the optically transmissive materials being a sensing element having a resistance that is responsive to incident light. As acknowledged by the Examiner, the optical element of Wagner does not comprise a diffractive element. However, we fully agree with the Examiner that Morris evidences the obviousness of including a diffractive element in the monitoring apparatus of Wagner.

Appellant maintains that "[t]he Examiner has not referred to any prior art in support of his position that a motivation or suggestion to combine exists but, instead, apparently expects his unsupported conclusory statement to suffice" (Br. 9, second para.). Appellant submits that "[s]uch personal opinion does not represent an adequate substitute for evidence" (Br. 10, first para.). However, as explained by the Examiner, both Wagner and Morris "are directed towards power output monitors for a vertical cavity surface emitting laser system, with both inventions placing a transparent photo-sensing element between the laser emitter and the desired destination of the

laser output." (Ans. 5). Hence, it is clear that both references are directed to the same field of endeavor and concerned with the effective monitoring of light transmitted to a destination and, therefore, are analogous art. Also, Morris teaches that a diffractive element was used to effectively monitor an entire beam output by a vertical cavity surface emitting laser (col. 1, ll. 57-59). Hence, we find no error in the Examiner's legal conclusion that it would have been obvious for one of ordinary skill in the art to employ a diffractive optical element in the VCSEL of Wagner to achieve a particular beam output pattern. Significantly, Appellant has advanced no reason why one of ordinary skill in the art would have been dissuaded from including a diffractive element in the VCSEL of Wagner.

As a final point, we further note that Appellant bases no argument upon objective evidence of nonobviousness, such as unexpected results.

In conclusion, based on the foregoing and the reasons well stated by the Examiner, the Examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v)(2008).

AFFIRMED

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